

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 15, 2011
POSITION: Oppose

BILL NUMBER: SB 411
AUTHOR: C. Price

BILL SUMMARY: Home Care Services Act of 2011

This is a brand new bill creating the "Home Care Services Act of 2011" which requires the Department of Public Health (DPH) to license and regulate home care organizations (HCO).

FISCAL SUMMARY

Existing law provides the DPH authority to adjust licensure fees annually as necessary to cover workload expenditures associated with licensing and enforcement functions of health care facilities. The licensure fees are adjusted annually based on prior year workload data. Using existing authority to set licensing fees, the department would require one full year of workload data to determine workload associated expenses in order to set the appropriate licensure fee for the home care agency category; because this bill does not set a baseline licensing fee for the initial year, the department would be unable to establish a fee using its existing authority. As a result, the department would require a loan from the General Fund to support Licensing and Certification start-up costs associated with the initial year of licensure. After the first year, the department would set licensure fees based on historical workload and the loan would be repaid from licensing fees paid by these entities.

The author indicates there are approximately 2,000 home care agencies currently providing services that would need to be licensed. Based on DPH experience with home health agencies there will be an additional 255 new HCO applications each year. It takes the DPH 24 hours to review and process applications for similar facility types. The standard annual hours for headquarters' staff is 1,800, the standard hours for survey staff is 1,205.

The DPH would require 142.5 positions and a General Fund loan of \$501,000 in 2011-12 to implement this bill. This loan would be repaid using licensure fees associated with this new program. The costs of the program in 2012-13 would be \$5.6 million, which would be offset by licensure fees as necessary to cover workload expenditures. The ongoing costs of \$12.5 million annually also would be offset by licensure fees.

COMMENTS

Finance is opposed to this bill. Creating a program that requires new positions and resources would be inconsistent with the Governor's desire to limit the size of state government as evidenced by the current hiring freeze.

Existing law provides for the licensing and regulation of various healthcare facilities by the DPH and establishes home health agencies and requires all organizations that provide skilled nursing services to patients in the home to obtain a home health agency license issued by the DPH. Existing law also provides for the licensing and regulation of various community care facilities under the Community Care Licensing division of the Department of Social Services which licenses and oversees both day care and residential facilities for children and adults in California. The law also establishes the county-administered In-Home Supportive Services (IHSS) Program to provide personal services and home care for eligible poor, aged, blind and disabled individuals.

Analyst/Principal (0553) B. Nunes	Date	Assistant Program Budget Manager John Doyle	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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This bill creates the Act to license and regulate HCOs under the DPH. This includes granting the DPH the authority to cover the costs of administering this Act by assessing licensure, renewals, background checks and other fees for each home organization.

This bill defines a "home care aide" (HCA) as an individual who provides home care services to a client in the client's residence and a HCO as an individual, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for the provision of home care services. Under this bill, an HCO would not include any county providing IHSS, a home health agency, a hospice facility, or a health facility defined in Health and Safety Code section 1250. This bill also defines "home care services" to mean services provided by a HCA to a client who cannot perform these services for themselves.

This bill's licensure requirements are as follows:

1. The bill requires an HCO to obtain a license prior to arranging home care services.
2. The bill requires an HCO to have an office in California and obtain authorization from the Secretary of State to conduct business in California.
3. The bill requires the DPH to adopt rules and regulations to implement this Act, establish procedures for handling complaints against HCOs, and make a list of HCOs available on their website; this list will include the HCO's name, address, license number and date of license, and a list of all violations.
4. The bill requires an HCO to submit an application, pay a licensure fee, pass a background check, submit proof of general and professional liability and a valid workers' compensation policy, and provide the DPH with a list of all of its HCAs prior to the DPH issuing a license.
5. The bill requires the DPH to conduct an onsite inspection of the HCO to ensure compliance.
6. The bill requires the owners of an HCO to submit to a background check.
7. The bill requires the DPH to deny a license if the background check uncovers a felony conviction or a crime that evidences an unfitness to operate an HCO.
8. The bill prohibits an HCO from representing itself as an HCO or from using the words "home care organization", "homecare", "in-home care", or any combination of those terms, within its name unless they are licensed pursuant to this legislation.

This bill's HCO Operating Requirements are as follows:

1. Post its license in its place of business in a location visible to clients and HCAs.
2. Operate the organization in a commercial office space that complies with local zoning laws.
3. Have plans, procedures, and policies in place, including the following:
 - a. Emergency and natural disaster plan in the event of interruption of home care services.
 - b. Documented backup staffing plan in the event that a scheduled HCA becomes unavailable.
 - c. Written policy regarding advance directives.
 - d. Receipt and disbursement policy for expenditures made on behalf of a client to ensure that financial abuse does not occur.
4. Maintain an employee dishonesty bond with a minimum limit of \$10,000, including third-party coverage.
5. Comply with regulations adopted by the DPH implementing this chapter.
6. Requires an HCO employing HCAs to do the following:
 - a. Ensure each of its HCAs meets the requirements established by this legislation.
 - b. Investigate complaints made by a client, or a client's family member or guardian, against HCAs.
 - c. Conduct performance and effectiveness annual assessments of the performance of each HCA.
 - d. Supervise each HCA providing home care services in the residence of a client every 62 days.

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- e. Require an HCA to wear a badge while providing home care services; the badge must include the aide's name and photograph, and other information as specified.
- f. Require HCAs to demonstrate that they are free of active tuberculosis.
- g. Require HCAs to complete not less than eight paid hours of department-approved training on job-related topics annually.
- h. Prohibit HCAs from accepting money or property from a client without written permission from the HCO.

This bill's Client Rights are as follows:

An HCO should:

1. Distribute its advance directive policy, along with a written summary of applicable state law, to the client.
2. Advise the client of its client records disclosure policy.
3. Inform the client of the types and hours of available home care services.
4. Inform the client, orally and in writing, of Medi-Cal or Medicare home care services coverage
5. Requires the client be informed of the availability of Office of State Long-Term Care Ombudsman services.
6. Establish that home care clients are entitled to the following rights and provide a written notice citing these rights:
 - a. The right to have the client's property treated with respect.
 - b. The right to voice grievances free from reprisal regarding a home care service that is or fails to be provided or regarding the violation of any of the rights listed in this section.
 - c. The right to be informed of and to participate in the planning of the client home care services.
 - d. The right to confidentiality of the client's personal information.

The bill's HCAs requirements are as follows:

1. The bill requires certification as an HCA within 180 days from the date of being hired.
2. The bill requires an HCA to complete a minimum of five hours of entry-level training as follows:
 - a. Two hours of orientation training regarding their role as caregiver and the applicable terms of employment.
 - b. Three hours of safety training, including basic safety precautions, emergency procedures and infection control.
 - c. Other training related to core competencies and population-specific competencies.
3. The bill provides that only DPH approved training curriculum may be used:
 - a. Curriculum must be developed with input from consumer and worker representatives.
 - b. Curriculum requires comprehensive instruction by qualified instructors on the competencies and training topics prescribed.
4. The bill requires the DPH to issue an HCA certificate to each individual meeting these training requirements.
5. The bill requires the DPH to maintain a list of each HCA certificate holder, with contact information, on its website.
6. The bill requires the DPH to set a certification fee that shall be paid for by the employer.
7. The bill allows for an individual who wishes to obtain a certificate to provide HCA services to pay for his or her own certification.
8. The bill prohibits an HCO from hiring an individual as an HCA unless that individual complies with these specified requirements:
 - a. An HCO shall ensure that the individual satisfactorily completes the training within the first 18 days of employment.
 - b. An HCO shall conduct and pay for a background check on an individual hired as a HCA, unless the individual holds a valid, unexpired license or registration in a health-related field that requires a background check as a condition of the license or registration.

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- c. The bill prohibits an HCA hired on or after January 1, 2012, from providing home care services until he or she passes the background check.
10. Prohibits the employment of an individual whose background check discloses specified conviction or incarceration for a conviction within 10 years.

This bill's Enforcement Requirements are as follows:

1. The bill requires the DPH to investigate complaints filed against HCOs.
2. The bill requires the DPH to verify that an HCO meets the requirements and regulations of this chapter through annual, random, unannounced inspections.
3. The bill establishes that an individual or entity will be liable for a civil penalty not to exceed of \$900 per day for each calendar day of violations.
4. The bill requires the DPH to send written notice of noncompliance to the individual or entity and to the Attorney General or appropriate district attorney for further action.

		SO	(Fiscal Impact by Fiscal Year)						
Code/Department		LA	(Dollars in Thousands)						
Agency or Revenue	CO	PROP							Fund
Type	RV	98	FC	2011-2012	FC	2012-2013	FC	2013-2014	Code
4265/PublicHealth	SO	No	C	\$501	C	\$5,618	C	\$12,465	3098
1257/Othr Reg Lic	RV	No	U	\$501	U	\$5,618	U	\$12,465	3098
<u>Fund Code</u>	<u>Title</u>								
3098	Licensing and Certification Prog Fd, PH								